IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.482 OF 1989

1. Smt.Tangavva w/o Shankar Pawar)
age 55, Occ. Household work and)
agriculture r/o Wadi Vesh,)
Gaothan Galli, Miraj.)

2. Shri Appasaheb Shankar Pawar,)
age 33, Occ. Service and agri.)
r/o Wadi Vesh, Gaothan Galli,)
Miraj.

3. Sou Akkatai Gajanan Jadhav)
age 30, Occ. household work,)
resident of Sangalwadi.)

4. Shri Nana Govind Pawar Singh)
since deceased by his heir widow)

a. Draupadi Nana Pawar,)
since deceased by heirs and)
legal representatives)

a-1 Smt.Anusuya Dhondiram Jadhav)
age 63 yrs. Occ. housewife)
residing at Shirad Tah Shirat)
District Kolhapur)

a-2 Smt. Baby Mahadeo Nikam)
age 48 years, Occ. housewife)
at and Post Ramanandnagar)
Kumbhar Vasahat, Kirloskwarwadi)
Tal. Pauls, Dist. Sangli)

a-3 Smt.Rekhatai Tanaji Patil)
age 34 years, Occ. Housewife)
Residing at Ghatnandre,)
Tal Kawathe Mahankal)
Dist. Sangli.)

4. Nana Govind Pawar, since)
deceased by his heirs - widow)
a. Draupadi Nana Pawar
r/o. Kisan Chowk, Miraj)
District Sangli.)...Appellants

Versus

1. Smt. Tulasabai Doulu Jadhav)
age 75 occ. household work)
r/o Pachhapur, Tal.Jath)
District Sangli)

2. Shri Laxman Doulu Jadhav)
age 32, agriculturiest,)
r/o Pachhapur, Tal. Jath)
Dist. Sangli)...Respondents

Mrs. S.S.Gokhale for the appellants
Mr.S.G.Deshmukh for the respondents

CORAM : P.V.KAKADE, J.

DATE : 14th OCTOBER, 2005.

ORAL JUDGMENT :

1. This appeal is preferred by the appellants against the judgment and order passed by the Addl. District Judge, Sangli dated 12.7.1989 dismissing the appeal and confirming the judgment and order passed by Civil Judge, Junior Division, Jat dated 13.2.1987 decreeing the plaintiffs' suit for redemption of mortgage and for possession of the suit land.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The Plaintiffs filed the suit for redemption of mortgage property. The plaintiffs have given geneology of the family which shows that one Sakharam was common ancestor. Gangavva was wife of Sakharam. Sakharam had two sons, namely Tukaram and Daulu. Tukaram left behind him his wife Laxmibai and daughter Jijabai. The other son Daulu expired about 40-50 years back. He was surviving his wife Tulsabai. Tulsabai adopted respondent no.2 Laxman. Wife of Tukaram namely Laxmibai had a brother by name Govind Nana Pawar. She gave her daughter in marriage to her brother Govind. Two sons were born to her within the wedlock. Those were appellant no.1 Nana and Shankar. Shankar is dead. He was survived by his wife Gangavva alias Shantabai and a son namely Appasaheb and a daughter Akkabai Jadhav. These are appellant nos.2-A to 2-C. During the life time of Laxmibai, her mother-in-law Gangubai gave suit lands for her maintenance. Laxmibai started residing with her brother Govind at Miraj. She mortgaged the suit property to Govind for Rs.800/= on 28.8.1917. The mortgages were placed in possession and was to enjoy the usufruct towards satisfaction of the interest. The mortgage money was to be repaid within 10 years. If the

repayment is not made within the stipulated period, the mortgage money was to be paid at any time thereafter, when it was demanded by the mortgagee. In default of payment, the mortgagee had a right to recover the mortgage money by selling the mortgaged property. Till then he was to enjoy the usufruct. Govind expired on 1.4.1938. Laxmibai expired at Miraj on 9.9.1953. After the death of Laxmibai, the property reverted and respondents acquired right of redemption. Respondents approached heirs of Govind and offered to pay the mortgage money and hence the suit came to be filed.

4. The appellants-defendant No.1 Tangavva and Appellant No.4 Nana Govind Pawar resisted the suit by filing written statement, inter alia, denying the claim of the plaintiffs on various grounds mentioning that the suit was barred by law of limitation. It was also contended that the suit property was owned by Sakharam and after death of Sakharam the property was devolved on his sons, Tukaram and Daulu. The suit property belonged to Tukaram. After his death, it was inherited by Laxmibai. Laxmibai mortgaged the suit property to her brother Govind Nana Pawar under mortgage deed dated 27.8.1917. The mortgagee was to be in possession of the

property. Subsequently Govind expired. His heirs appellant no.4 Nana and deceased Shankar then came into possession of the mortgaged property and their names were mutated in the revenue record. They were cultivating the suit land. The property was then partitioned between the brothers. It was sub-divided into different numbers. After the death of Shankar, his heirs inherited the property and names of appellant nos.1, 2 and 3 recorded in the revenue record. After mortgaging the property, Laxmibai started living with her brother. She expired on 9.9.1953. The suit property was then inherited by her daughter Jijabai. Jijabai also acquired right to redeem the mortgage. After the death of Jijabai the property was inherited by appellant no.4 Nana and deceased Shankar. They were also mortgagees and therefore, there was no question of redeeming the mortgage. On such and other grounds the suit was sought to be dismissed.

5. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the plaintiffs had proved that their derivative title was established and they were entitled to redeem the suit property. It was also held that the suit was within limitation and as

such suit came to be decreed. The appeal was carried to the District Court. The learned Addl. District Judge after hearing both the parties came to the conclusion that the respondents were entitled to redeem the mortgage and the suit was within limitation. It was further held that the respondents had proved that they are acquired title of the suit property after death of Laxmibai and as such the appeal came to be dismissed.

6. At the time of admission this Court raised substantial questions of law to determine this appeal to the effect whether the plaintiffs-respondents' claim was within limitation?, and secondly whether the property in suit came to Laxmibai as a limited owner or whether it came as or became absolute property in her or her successor's hands?

7. It was submitted on behalf of the appellants that the suit was barred by limitation. According to the old limitation act i.e. Limitation Act of 1908 as per Article 148, the limitation period was of 60 years to redeem the mortgage. The said period of limitation started from the date on which the right to redemption accrues to the mortgagor. The said period of 60 years

expires in the year 1987. However, the new Limitation Act came into force in the year 1963. According to the new Limitation Act, Article 61 is applicable which lays down the period of limitation for the redemption of mortgage which is 30 years from the date of which the right to redemption accrues. It was submitted that by virtue of Section 30 of the Limitation Act if the limitation period as per the new Act is shorter than that of the old one, the suit for mortgage will be filed within a period of seven years from the date on which the new limitation act came into force. The said Limitation Act of 1963 came into force on and from 1st January 1964 and therefore, the suit for redemption should have been filed on or about 1st January 1971. The present suit was filed in January 1981 therefore, it is barred by limitation. However, in this respect it must be noted, the nature of the present mortgage is a composite mortgage because there is also a personal covenant to pay mortgage money and mortgagor has a right to recover the mortgage money by putting the property to sell. It is to be noted that limitation has to be computed from 27.8.1927 as the repayment was to be made within 10 years and limitation cannot be computed from the death of Laxmibai. P.W.1 Krishna has deposed that

he had approached appellants about seven years prior to the filing of the suit and had offered to pay the amount, however, the said offer was not accepted. Then the testimony of P.W.1 Krishna was further corroborated by P.W.2 Sharanappa Patil. He has also deposed that he was with P.W.1 Krishna and others when the offer was made for redemption. It is to be noted that this aspect of testimony is not challenged on the point of offer of redemption. Therefore, time will begin from this date. Article 61 provides limitation of 30 years for a redemption suit, and therefore, suit filed in the year 1981 would be within limitation and provision of Section 30 of the Limitation Act cannot be invoked in the present set of circumstances, as submitted on behalf of the appellants.

8. Similarly, it is to be noted that in the present case there was no partition and co-parcernery continued. After advent of Hindu Womens' Right to Property Act, 1937 in the year 1950 Laxmibai got interest in the coparcenery and she became one of the coparceners by fiction. However, as there was no partition or demand was made by Laxmibai for partition, her share in the property was not determined and therefore, after her

death the property devolved on the surviving coparceners. The evidence on record shows that the property was given for maintenance and the intention of the parties was that it should revert to the surviving coparceners after the death of Laxmibai. Therefore, merely because the suit property was given to Laxmibai for maintenance, it cannot be said that her share in the coparcenery property became ascertainable and definite. Therefore, the argument to the effect that Laxmibai acquired title to the suit property after coming into force of the Hindu Womens' Right to Property Act, 1937 cannot be accepted. The documentary evidence on record further corroborates testimony of P.W.1 Krishna that there was no partition between Tukaram and Daulu and the property was to revert to the coparcener after the death of Laxmibai. It follows that no reliance can be placed on the vague testimony of appellant no.4 Nana and there was a partition between the brothers and Tukaram was separately cultivating his fields and therefore, the property devolved by intested succession on Laxmibai and then to her heirs. The evidence on record shows that after the death of Laxmibai the property reverted to the family of Daulu and, therefore, respondents acquired title to the property. It follows that by virtue of

their title, the respondents also become entitled to redeem the mortgage.

9. For these reasons I am of the view that the findings recorded and reasoning adopted by the lower appellate court are seen to be just, legal and proper and therefore, it would brook no interference.

. In the result the appeal stands dismissed with no order as to costs.